

1 IN THE UNITED STATES DISTRICT COURT FOR THE
 2 NORTHERN DISTRICT OF OKLAHOMA
 3
 4

5 W. A. DREW EDMONDSON, in his)
 6 capacity as ATTORNEY GENERAL)
 7 OF THE STATE OF OKLAHOMA and)
 8 OKLAHOMA SECRETARY OF THE)
 9 ENVIRONMENT C. MILES TOLBERT,))
 10 in his capacity as the)
 11 TRUSTEE FOR NATURAL RESOURCES))
 12 FOR THE STATE OF OKLAHOMA,)

13 Plaintiff,)

14 vs.)

15 4:05-CV-00329-TCK-SAJ

16 TYSON FOODS, INC., et al,)

17 Defendants.)

18 - - - - -
 19 THE VIDEOTAPED DEPOSITION OF
 20 ROBERT TAYLOR, PhD, produced as a witness on
 21 behalf of the Defendants in the above styled and
 22 numbered cause, taken on the 15th day of July, 2008,
 23 in the City of Tulsa, County of Tulsa, State of
 24 Oklahoma, before me, Lisa A. Steinmeyer, a Certified
 25 Shorthand Reporter, duly certified under and by
 virtue of the laws of the State of Oklahoma.

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EXHIBIT

40

1 A I'm not sure about that. That's -- that
2 question covers a lot of ground.

3 Q It's intended to.

4 A Okay. Ask the question again, please.

5 Q Will you attempt to testify at the trial of 09:36AM
6 this case that any of the integrator defendants in
7 this case have abused their relationship with those
8 contract growers who grow birds for them?

9 A I will testify that they have tried to shift
10 risk associated with waste to growers as is 09:36AM
11 reflected in recent contracts compared to older
12 contracts. I'm not sure the word abuse fits. I'm
13 saying I will testify that the integrator has
14 monopsony or oligopsony any power over growers, but
15 that doesn't require abuse either. 09:37AM

16 Q And what you're referring to, Doctor -- I
17 think in your report you look at contracts 15, 20
18 years ago, for instance?

19 A Some less than that.

20 Q That perhaps do not address the disposition of 09:37AM
21 poultry litter versus newer contracts, which do
22 address the disposition of poultry litter; is that
23 true?

24 A With the exception of the Willow Brook
25 contracts, I think the latest one was '01 or '02 but 09:37AM

1 integrator even though the, quote, contracts, end
2 quote, are written for a shorter period of time?

3 A It may indicate they're happy, or it may
4 indicate that the grower feels he or she has no way
5 out. So I just mean that to me, as an economist, 10:25AM
6 that is a striking feature.

7 Q And have you spoken to any growers who grow
8 for any of the companies who are defendants in this
9 case?

10 A As far as I know, I have not talked to any 10:25AM
11 growers in the IRW.

12 Q Then it would be true that you don't know
13 whether there is a feeling on the part of any grower
14 who grows with any of the defendants in this case
15 that they feel like there's no way out? 10:26AM

16 A No, and I wouldn't know how to uncover their
17 true thoughts on that.

18 Q In the last sentence of Paragraph 22 you
19 state, quote, even though there are several
20 integrators in the IRW, the defendant integrators 10:26AM
21 maintain monopsony or oligopsony power over their
22 contract growers extending to waste and dead bird
23 disposal, period, end quote.

24 A Yes.

25 Q Tell me what you mean by that. 10:26AM

1 A I mean that simply because the grower has such
2 an investment in houses and equipment, that
3 generally if the integrator chooses not to deliver
4 birds except for the first flock, they don't have to
5 and if the integrator decides to put a new contract 10:27AM
6 feature in, whatever it may be, can apply waste and
7 dead bird disposal, then the grower has little
8 viable economic option other than to accept it or go
9 bankrupt.

10 Q But per your previous testimony, Dr. Taylor, 10:27AM
11 you're unable to provide the court or jury in this
12 case the name of any contract grower who one of the
13 integrator defendants has denied birds?

14 A I have simply not analyzed that. I don't have
15 the data to analyze it. 10:28AM

16 Q Let's talk about dead bird disposal for a
17 second. How are dead birds disposed of? Tell me
18 the ways.

19 A Well, there's --

20 Q In the IRW. 10:28AM

21 A I do not know now. You know, there have been
22 different technologies through time. Going back in
23 time, some of them were thrown out, and that's
24 probably why disposal of dead bird requirements are
25 in some of the early contracts. They've gone to 10:29AM

1 I had just scanned those, and there was nothing
2 fundamentally different from other contracts I had
3 seen. So I went back and took a more careful look
4 at those, addressing issues you raised with the --
5 with one of the Peterson contracts and also
6 addressing kind of the evolution of those contracts
7 and how waste management -- how or when waste
8 management appeared.

12:34PM

9 Q Okay. What were the issues with the Peterson
10 contract that you referred to?

12:34PM

11 A That the growers owned the litter.

12 Q The Peterson contracts state that the grower
13 owns the litter?

14 A Let me go back and make sure.

15 Q I believe that's correct.

12:34PM

16 A Too many contracts for me to remember. All
17 poultry waste produced by the birds covered by this
18 contract shall be the exclusive property of the
19 contract farmer, and it goes on from there.

20 Q Okay. So the Peterson contract says the
21 grower owns the poultry litter?

12:34PM

22 A It is the only contract I've seen that states
23 the defendant -- that the waste is the exclusive
24 property of the grower.

25 Q Okay, and it's my understanding from your

12:35PM

1 prior testimony this morning that you believe that
2 these contract provisions that you've cited manifest
3 the integrators' attempt to shift risk to the
4 grower; is that correct?

5 A Yes.

12:35PM

6 Q Explain to me how that risk is being shifted
7 in the context of this Peterson contract where the
8 Peterson grower owns the litter.

9 A Well, in the -- I don't think I have -- wait.

10 '79 and '86 contracts make no mention of

12:35PM

11 responsibility for disposal or ownership, and then
12 the '04 contract comes in and says it's the
13 exclusive property of the contract farmer. Then it
14 goes on to state how they can use their exclusive
15 property, which --

12:36PM

16 Q How does it state they can use their property?

17 A It says the grower shall be responsible for
18 and receive all of the economic benefits from the
19 use and disposal of said litter. Doesn't mention
20 cost or net benefit, and it goes on to specify --

12:36PM

21 I'm reading my own. Goes on to specify exactly how
22 the grower is to dispose of litter and waste he or
23 she presumably owns and, as I recall, there's a list
24 of what they're supposed to do with their exclusive
25 property.

12:36PM

1 Q Okay, and you're referring to the BMPs that
2 are contained within the contract?

3 A Right.

4 Q So those were BMPs. Do you know whether the
5 Oklahoma poultry laws and regulations contain any 12:37PM
6 BMPs?

7 A I think they do, yes.

8 Q And would those BMPs contain in Oklahoma and
9 Arkansas laws determine how a grower could use its
10 litter? 12:37PM

11 A It's just strange to me, as an economist, that
12 the contract says it's the grower's exclusive
13 property but then you go on to tell them what they
14 can do with it or can't do.

15 Q That wasn't my question. I'm saying, wouldn't 12:37PM
16 the litter laws in Oklahoma and Arkansas, which
17 you've stated contain BMPs determine how that grower
18 can use his litter?

19 A Yes.

20 Q Okay, and that's going to be independent of 12:37PM
21 anything that's contained in the contract; is that
22 correct?

23 A As I understand it.

24 Q Okay, and I believe you previously testified,
25 I believe it was at the preliminary injunction 12:38PM